

JUN 15 2018

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

ORDERED PUBLISHED

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

5	In re:)	BAP No.	NC-17-1152-FBTa
)		
6	SYDNEY EILEEN SORENSEN,)	Bk. No.	16-52281
)		
7	Debtor.)	Adv. No.	17-05018
)		
8	_____)		
)		
9	SCHNITZEL, INC., dba R&J)		
	JEWELRY & LOAN,)		
10	Appellant,)		
)		
11	v.)	OPINION	
)		
12	SYDNEY EILEEN SORENSEN,)		
)		
13	Appellee.)		
)		
14	_____)		

Argued and submitted on May 25, 2018
at San Francisco, California

Filed - June 15, 2018

Appeal from the United States Bankruptcy Court
for the Northern District of California

Honorable Stephen J. Johnson, Bankruptcy Judge, Presiding

Appearances: Jon Webster, The Law Offices of Jon Webster,
argued on behalf of appellant Schnitzel, Inc., dba
R&J Jewelry & Loan; David A. Boone, The Law
Offices of David A. Boone, argued on behalf of
appellee Sydney Eileen Sorensen.

Before: FARIS, BRAND, and TAYLOR, Bankruptcy Judges.

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1 FARIS, Bankruptcy Judge:
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3 **INTRODUCTION**

4 Appellant Schnitzel, Inc., dba R&J Jewelry & Loan ("R&J"),
5 appeals from the bankruptcy court's ruling prohibiting R&J from
6 disposing of chapter 13¹ debtor Sydney Eileen Sorensen's pawned
7 jewelry. R&J argues that the bankruptcy court erred because the
8 jewelry was excluded from Ms. Sorensen's estate by § 541(b)(8),
9 and she could not extend her right to redeem the property through
10 the bankruptcy process. We AFFIRM.

11 **FACTUAL BACKGROUND**

12 R&J is a licensed pawnbroker in the state of California. In
13 March 2016, Ms. Sorensen pledged five pieces of jewelry as
14 collateral for five pawn loans with R&J. Four months later, she
15 obtained replacement loans that had a termination date of
16 November 18, 2016.

17 Prior to the termination date of the loans, Ms. Sorensen
18 filed for chapter 13 bankruptcy protection. Her schedules
19 identified R&J as a creditor holding claims secured by the pawned
20 jewelry. Her proposed chapter 13 plan listed R&J as a secured
21 creditor and sought to repay the loans and retain the jewelry.

22 On November 18, 2016, R&J issued a notice of loan
23 termination, providing a ten-day right to redemption required by
24 state law. Ms. Sorensen did not redeem the jewelry during the
25

26 ¹ Unless specified otherwise, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all
28 "Rule" references are to the Federal Rules of Bankruptcy
Procedure, and all "Civil Rule" references are to the Federal
Rules of Civil Procedure.

1 ten-day period.

2 Ms. Sorensen filed an amended chapter 13 plan,² which again
3 identified R&J as a secured creditor and proposed to make \$50
4 monthly payments on each of the five loans. R&J did not oppose
5 plan confirmation.

6 Meanwhile, counsel for R&J and Ms. Sorensen communicated
7 about the status and characterization of the pawn loans. R&J
8 offered Ms. Sorensen two more extensions of her redemption
9 rights; the final deadline was March 3, 2017.

10 On March 1, Ms. Sorensen filed an adversary proceeding
11 complaint for injunctive and declaratory relief against R&J. She
12 requested that the court issue an injunction preventing R&J from
13 disposing of the jewelry, which she contended was part of the
14 bankruptcy estate and therefore subject to the automatic stay.

15 Ms. Sorensen also filed an application for a temporary
16 restraining order ("TRO Motion") to prevent R&J from disposing of
17 the jewelry. She argued that she satisfied the standard for a
18 temporary restraining order ("TRO") because she had "every
19 intention to retain the liens and make payment on those liens to
20 redeem possession of her jewelry, [and] she had clearly stated
21 her intentions to retain the liens and redeem the property in her
22 Chapter 13 Plan"

23 In opposition to the TRO Motion, R&J argued that Ms.
24 Sorensen was unlikely to succeed on the merits because the

25

26 ² The chapter 13 trustee raised several objections to the
27 original plan, including whether R&J had properly received notice
28 of the plan. The amended plan addressed the trustee's concerns,
including notice to R&J.

1 jewelry was excluded from the bankruptcy estate pursuant to
2 § 541(b)(8). It contended that, under § 541(b)(8)(C) and
3 § 108(b), the redemption period relevant to a pawn loan expires
4 on the later of (1) the loan termination date under state or
5 local law or (2) sixty days from the date of the bankruptcy
6 filing. Under California law, Ms. Sorensen had four months
7 (until November 18, 2016) to redeem her jewelry; R&J then issued
8 the statutorily-required grace notice extending the right of
9 redemption until November 28. It contended that, because Ms.
10 Sorensen did not redeem her property within the statutory period,
11 the jewelry was excluded from the bankruptcy estate under
12 § 541(b)(8), and the automatic stay never applied to the jewelry.

13 On March 28, 2017, the bankruptcy court confirmed Ms.
14 Sorensen's amended plan. Later that same day, the bankruptcy
15 court heard Ms. Sorensen's TRO Motion. In light of the earlier
16 plan confirmation and additional arguments raised by Ms.
17 Sorensen, the bankruptcy court ordered supplemental briefing and
18 continued the hearing.

19 On March 31, R&J filed a motion to dismiss the adversary
20 complaint ("Motion to Dismiss") under Civil Rules 12(b)(1) and
21 (b)(6), made applicable in bankruptcy by Rule 7012(b), arguing
22 that the bankruptcy court lacked subject matter jurisdiction over
23 the pawned jewelry because it was excluded from the bankruptcy
24 estate. It repeated that, under § 541(b)(8), the jewelry was not
25 part of the bankruptcy estate: due to Ms. Sorensen's and "the
26 Trustee's failure to redeem the property in the statutorily
27 prescribed time limit, the property never entered the bankruptcy
28 estate. If Plaintiff wished to include the pledged items in the

1 estate, Plaintiff was required to redeem them pursuant to Section
2 541(b)(8)(C) and Section 108(b).” It also argued that Ms.
3 Sorensen failed to state a claim upon which relief could be
4 granted: the “automatic stay does not in any way affect the
5 statutory redemption period of Section 108 and Section
6 541(b)(8)(C). Plaintiff has not alleged, and cannot allege, that
7 Debtor-Plaintiff or the Trustee attempted to redeem the property
8 within the time prescribed by Section 108.”

9 Following a hearing on the continued TRO Motion and the
10 Motion to Dismiss, the bankruptcy court orally held that
11 (1) R&J’s notice of loan termination was likely void for
12 violating the automatic stay; and (2) Ms. Sorensen’s confirmed
13 chapter 13 plan - including its treatment of the jewelry - was
14 binding on the parties. It considered the interplay between
15 three factors: state law, bankruptcy law, and the confirmed plan.

16 First, the court noted that California law allows a four-
17 month loan period that expired on November 18, 2016. At that
18 time, if R&J properly provided statutory notice and a ten-day
19 redemption period to Ms. Sorensen, then, “[p]ursuant to
20 California Finance Code Section 21201, R&J would be vested with
21 all right, title, and interest in the jewelry after the
22 expiration of the ten-day period.”

23 Second, the bankruptcy court considered how Ms. Sorensen’s
24 bankruptcy case affected the parties’ rights. It stated that,
25 when she filed her petition, her estate included her option to
26 redeem the jewelry. However, under § 541(b)(8), certain tangible
27 property pledged to pawnbrokers is excluded from property of the
28 estate unless the debtor redeems the property within the time

1 allowed under § 108(b). That section provides that the
2 redemption period is the later of sixty days after the petition
3 is filed or the period set by state law. But the bankruptcy
4 court noted that the time period under state law had not expired
5 because the ten-day notice that R&J sent violated the automatic
6 stay:

7 Here, R&J never sent a proper notice of loan
8 termination. Section 362(a)(6) enjoins any act to
9 collect, [assess], or recover a claim against the
10 debtor that arose before the property of the – the
11 commencement of the case. Nothing in 541(b)(8), which
12 is the section that talks about ownership[] of these
13 assets[,] creates an exception to the automatic stay.
14 So relief from stay is required before any collection
15 action can begin. And the reference here is 5 Collier
16 on Bankruptcy, at 541 – paragraph 541.24.

17 R&J never moved for relief from stay, which likely
18 would have been granted in view of Section 541(b)(8).
19 And it would have allowed R&J to send the notice
20 required by California law. As everyone knows, actions
21 taken in violation of the stay are void. So it is as
22 if R&J never sent the notice and the ten-day redemption
23 period never began. Accordingly, title to the property
24 was never vested in R&J.

25 Third, the bankruptcy court considered the effect of Ms.
26 Sorensen's confirmed plan. It stated that the plan controlled
27 the disposition of the jewelry under § 1327(a) and Espinosa v.
28 United Student Aid Funds, Inc., 553 F.3d 1193 (9th Cir. 2008),
aff'd, 559 U.S. 260 (2010). The court entered an order granting
the TRO Motion and denying the Motion to Dismiss ("Order").

 R&J filed a timely notice of appeal from the Order and a
motion for leave to appeal. The BAP motions panel remanded the
case to the bankruptcy court for a determination whether the
Order granted a TRO, and is thus interlocutory, or whether the
Order granted a preliminary injunction and is immediately
reviewable on appeal. The bankruptcy court clarified that,

1 despite language indicative of a TRO, the Order constituted a
2 preliminary injunction. The bankruptcy court also supplemented
3 the reasoning behind the Order, stating that Ms. Sorensen sought
4 to retain ownership of the jewelry through a confirmed plan that
5 "treated the Property as collateral for a secured claim held by
6 R&J and called for payment of that secured claim over time. R&J
7 did not object to any of Plaintiff's Chapter 13 plans. . . . The
8 Court continues to believe the confirmed Chapter 13 plan controls
9 the Property."

10 JURISDICTION

11 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
12 §§ 1334 and 157(b) (1) and (b) (2) (B). We have jurisdiction under
13 28 U.S.C. § 158.

14 ISSUE

15 Whether the bankruptcy court erred in denying R&J's Motion
16 to Dismiss and granting Ms. Sorensen a preliminary injunction
17 preventing R&J from disposing of the jewelry.

18 STANDARD OF REVIEW

19 The issues before the Panel are purely questions of law,
20 which we review de novo. Great Lakes Higher Educ. Corp. v.
21 Pardee (In re Pardee), 218 B.R. 916, 919 (9th Cir. BAP 1998),
22 aff'd, 193 F.3d 1083 (9th Cir. 1999) ("We review conclusions of
23 law, including the bankruptcy court's interpretation of the
24 Bankruptcy Code, de novo."). De novo review is independent and
25 gives no deference to the trial court's conclusion. Roth v.
26 Educ. Credit Mgmt. Agency (In re Roth), 490 B.R. 908, 915 (9th
27 Cir. BAP 2013).

1 DISCUSSION

2 **A. R&J did not validly terminate Ms. Sorensen's right to redeem**
3 **the jewelry.**

4 The overarching question before the Panel is whether the
5 pawned jewelry is still property of the bankruptcy estate. This
6 appears to be a question of first impression in this circuit. We
7 agree with the bankruptcy court's reasoning.

8 **1. When Ms. Sorensen filed for bankruptcy protection, her**
9 **interest in the jewelry became part of the bankruptcy**
10 **estate.**

11 We must first decide how Ms. Sorensen's bankruptcy petition
12 affected the parties' respective interests in the jewelry.

13 Under § 541(a), an estate is created at the filing of a
14 bankruptcy petition that contains, subject to certain exceptions,
15 "all legal or equitable interests of the debtor in property as of
16 the commencement of the case." § 541(a)(1). "[A
17 pre-foreclosure right to redeem is a property right under section
18 541" Harsh Inv. Corp. v. Bialac (In re Bialac), 712 F.2d
19 426, 431 (9th Cir. 1983). This includes rights that a debtor
20 retains in her pawned property. See Title Max v. Northington (In
21 re Northington), 876 F.3d 1302, 1309-10 (11th Cir. 2017)

22 (agreeing that the debtor "retained property interests in the
23 [pawned property] that became 'property of the estate' under 11
24 U.S.C. § 541. In particular, the parties agree that the car,
25 which remained in [the debtor's] possession, as well as the
26 associated right to redeem it – which at that time had not yet
27 expired – entered the estate with the filing of his petition").

28 In the present case, when Ms. Sorensen filed her bankruptcy
petition, all of her interests in her jewelry at that time became

1 part of her bankruptcy estate. See Cty. of Imperial Treasurer-
2 Tax Collector v. Stadtmueller (In re RW Meridian LLC), 564 B.R.
3 21, 28 (9th Cir. BAP 2017) ("The nature and extent of the
4 debtor's interests in property must be determined by
5 nonbankruptcy law."); Cal. Fin. Code. § 21201(a), (f). The
6 bankruptcy court correctly held that her estate included her
7 right to redeem her jewelry.

8 **2. Under California law, § 541(b)(8) does not**
9 **automatically exclude pawned property from the**
10 **bankruptcy estate without notice to the pawnor.**

11 R&J argues that the plain language of § 541(b)(8)
12 automatically exempts the pawned property from the bankruptcy
13 estate. That subsection provides that:

14 (b) Property of the estate does not include--

15 . . .

16 (8) subject to subchapter III of chapter 5, any
17 interest of the debtor in property where the
18 debtor pledged or sold tangible personal property
19 (other than securities or written or printed
20 evidences of indebtedness or title) as collateral
21 for a loan or advance of money given by a person
22 licensed under law to make such loans or advances,
23 where -

24 (A) the tangible personal property is in the
25 possession of the pledgee or transferee;

26 (B) the debtor has no obligation to repay the
27 money, redeem the collateral, or buy back the
28 property at a stipulated price; and

(C) neither the debtor nor the trustee have
exercised any right to redeem provided under
the contract or State law, in a timely manner
as provided under State law and section
108(b) [.]

§ 541(b)(8). The parties do not dispute that subsections (A) and
(B) are satisfied; only (C) is at issue in this appeal. We thus
look to § 108(b) and the relevant state law.

1 Section 108(b) provides:

2 (b) Except as provided in subsection (a) of this
3 section, if applicable nonbankruptcy law, an order
4 entered in a nonbankruptcy proceeding, or an agreement
5 fixes a period within which the debtor or an individual
6 protected under section 1201 or 1301 of this title may
7 file any pleading, demand, notice, or proof of claim or
8 loss, cure a default, or perform any other similar act,
9 and such period has not expired before the date of the
10 filing of the petition, the trustee may only file,
11 cure, or perform, as the case may be, before the later
12 of -

13 (1) the end of such period, including any
14 suspension of such period occurring on or after
15 the commencement of the case; or

16 (2) 60 days after the order for relief.

17 § 108(b).

18 In this case, California law provides the longer period for
19 redemption of pawned property. California Financial Code section
20 21201 provides that, if a pawned item is not redeemed before the
21 end of the loan period, the pawnbroker must give notice of the
22 loan termination and provide a ten-day redemption period:

23 (d) If any pledged article is not redeemed during the
24 loan period as provided herein, and the pledgor and
25 pawnbroker do not mutually agree in writing to extend
26 the loan period, **the pawnbroker shall notify the
27 pledgor within one month after expiration of the loan
28 period.** If the pawnbroker fails to notify the pledgor
within one month after the expiration of the loan
period, the pawnbroker shall not charge interest from
the day after the expiration of the one-month period.
**The pawnbroker shall notify the pledgor at his or her
last known mailing or electronic address of the
termination of the loan period,** by a means for which
verification of mailing or, at the sole option of the
pledgor, electronic transmission of the notification
can be provided by the pawnbroker, **and extending the
right of redemption, during posted business hours, for
a period of 10 days from date of mailing or electronic
transmission of that notice.**

29 Cal. Fin. Code § 21201(d) (emphases added). California law
30 specifies that the pawnbroker only becomes vested with full

1 ownership of the property after the ten-day period expires:

2 (f) If any pledged article is not redeemed within the
3 10-day notice period, **the pawnbroker shall become**
4 **vested with all right, title, and interest of the**
5 **pledgor, or his or her assigns, to the pledged article,**
6 to hold and dispose of as his or her own property.

7 Cal. Fin. Code § 21201(f) (emphases added); see Cal. Fin. Code
8 § 21002(b) (“‘Vested property’ is property the title to which has
9 been transferred from the pledgor to the pawnbroker pursuant to
10 Section 21201. Vested property is not pledged property.”).

11 In other words, the right to redeem pawned property under
12 California law does not expire until ten days after the
13 pawnbroker gives proper notice to the pledgor.

14 In the present case, Ms. Sorensen filed for bankruptcy
15 protection on August 9, 2016. The replacement loans terminated
16 on November 18, 2016. Pursuant to California Financial Code
17 section 21201(d), R&J then issued the notice of the ten-day right
18 of redemption. Ms. Sorensen did not redeem the jewelry during
19 the ten-day period.

20 R&J contends that, because Ms. Sorensen failed to redeem the
21 jewelry during the ten-day period, the pawned jewelry was
22 excluded from the bankruptcy estate under § 541(b)(8)(C). But as
23 we explain in the next section, the ten-day notice was void
24 because R&J issued it in violation of the automatic stay.

25 **3. The statutory redemption notice was void because R&J**
26 **failed to seek relief from stay.**

27 The automatic stay prevents a creditor from taking certain
28 actions against property of the bankruptcy estate. In relevant
part, § 362 provides:

1 (a) Except as provided in subsection (b) of this
2 section, a petition filed under section 301, 302, or
3 303 of this title . . . operates as a stay, applicable
4 to all entities, of -

5 . . .

6 (3) any act to obtain possession of property of
7 the estate or of property from the estate or to
8 exercise control over property of the estate;

9 . . .

10 (5) any act to create, perfect, or enforce against
11 property of the debtor any lien to the extent that
12 such lien secures a claim that arose before the
13 commencement of the case under this title;

14 (6) any act to collect, assess, or recover a claim
15 against the debtor that arose before the
16 commencement of the case under this title[.]

17 § 362(a) (3), (5), (6).

18 R&J's issuance of the ten-day notice was an act "to exercise
19 control over property of the estate[,]"³ to "enforce a lien
20 [that] . . . secures a claim[,]" and "to collect, assess, or
21 recover a claim against the debtor[.]"⁴ It thus violated
22 § 362(a). "Actions taken in violation of the automatic stay are
23 void." In re RW Meridian LLC, 564 B.R. at 28. Because the ten-
24 day notice was void ab initio, R&J did not satisfy the notice

25 ³ R&J already had "control" of the jewelry in the sense of
26 physical possession. The notice (if effective) would have given
27 it complete control by permitting it to sell the jewelry and keep
28 the proceeds. Cal. Fin. Code § 21201(d), (f). Therefore, the
notice violated § 362(a) (3).

⁴ R&J's loans were nonrecourse, meaning that if the proceeds
of sale of the jewelry were insufficient to repay the loans in
full, R&J had no recourse against Ms. Sorensen for the
deficiency. This is immaterial, because § 102(2) provides that
"claim against the debtor" includes claim against property of
the debtor" In other words, nonrecourse claims are
"claims" for bankruptcy purposes.

1 requirement in California Financial Code section 21201(d).

2 Accordingly, the ten-day redemption period never began to
3 run under subsection (d), Ms. Sorensen's redemption right was
4 never extinguished, R&J never took title to the jewelry under
5 subsection (f), and § 541(b)(8) did not remove the jewelry from
6 the estate.

7 This case is distinguishable from cases decided in other
8 jurisdictions with different state statutes. For example, in
9 Northington, the Eleventh Circuit held that, under state law
10 automatically vesting title in the pawnbroker at the expiration
11 of the redemption period, the pawned property "dropped out" of
12 the estate pursuant to § 541(b)(8). 876 F.3d at 1306. In that
13 case, the debtor failed to redeem prepetition pawned property,
14 and the pawnbroker sought relief from stay and argued that the
15 property was excluded from the estate pursuant to § 541(b)(8).
16 The Eleventh Circuit started with the proposition that the
17 debtor's interest in the pawned property became property of the
18 estate when he filed his bankruptcy petition. Id. at 1309. But
19 it stated that "an estate is not necessarily 'frozen in time,'
20 but rather can, in certain circumstances, expand or contract in
21 accordance with the operation of underlying state-law property
22 rules." Id. at 1314. The court held that, by operation of state
23 law, the pawned property "dropped out" of the estate:

24 Properly understood, the Bankruptcy Code takes an
25 estate's constituent property interests as it finds
26 them. If an asset is by its state-law nature static,
27 then it remains so in the bankruptcy estate. **If, by
28 contrast – as is often the case – state law imbues an
estate asset with a sort of internal dynamism, then
that characteristic will follow the asset into the
estate. . . .**

1 But increase will not always be the result –
2 sometimes the dynamism will reduce (or even eliminate)
3 an asset's value. Think, for instance, about a debtor
4 whose bankruptcy estate includes an option contract.
5 If the debtor fails to exercise the option in
6 accordance with state law, then the right to buy
7 disappears. This case reflects the same basic
8 phenomenon. Under Georgia's pawn statute, following
9 his loan's maturity date, Wilber had a conditional
10 right to possess the Charger as well as a right to
11 redeem it during the statutory period. But after the
12 expiration of the prescribed period, Wilber had no
13 rights in the car, possessory or otherwise. Rather,
14 his rights had been "automatically . . . extinguished"
15 and "automatically forfeited to [TitleMax]."

16 Id. at 1314-15 (emphasis added).

17 We agree with the Northington court's analysis,⁵ but the
18 result here is different because Georgia's pawnshop law differs
19 from California's. In Georgia, following a statutory redemption
20 period, the interest in the pawned property is **automatically**
21 vested in the pawnbroker; the pawnbroker does not need to take
22 any action. Ga. Code Ann. § 44-14-403(b)(3) ("Pledged goods not
23 redeemed within the grace period shall be automatically forfeited
24 to the pawnbroker by operation of this Code section, and any
25 ownership interest of the pledgor or seller shall automatically
26 be extinguished as regards the pledged item."). In contrast,
27 California Financial Code section 21201(d) required R&J to send
28 notice to Ms. Sorensen before it obtained legal title to the

29 ⁵ In particular, we agree that pawned property "drops out"
30 of the estate if the redemption right is not timely exercised.
31 R&J argues that pawned property does not enter the estate at all
32 unless and until the debtor or trustee timely exercises the
33 redemption right. The Northington court's view is more
34 consistent with the language and structure of § 541(b)(8). That
35 section expressly permits the debtor **or the trustee** to redeem the
36 property. If the redemption right were not property of the
37 estate, the trustee could not exercise it.

1 jewelry. That notice, as discussed above, was void because it
2 violated the automatic stay.⁶

3 R&J points out that this analysis treats California
4 pawnshops differently from pawnshops in other states that do not
5 require the pawnbroker to give notice of termination of the
6 redemption right.⁷ R&J argues that this result is unfair and

7
8 ⁶ This is not to say that § 362(a), rather than § 108(b),
9 controls the redemption period. We agree with other courts in
10 our circuit that have held that § 362(a) does not toll redemption
11 periods. See, e.g., In re York, No. 16-01964-FPC13, 2016 WL
12 6157432, at *3 (Bankr. E.D. Wash. Oct. 21, 2016) (“This court
13 finds more persuasive courts finding that § 362(a) does not toll
14 the running of the time period for redemption, and that the only
15 available extension of time for such periods is the 60 days
16 provided for in § 108(b). . . .”); In re Mosher, No. 07-60007-13,
17 2007 WL 1487399, at *7 (Bankr. D. Mont. May 17, 2007) (“Debtors’
18 argument that their redemption period was tolled by the automatic
19 stay is contradicted by the plain language of § 541(b)(8)(C)
20 which specifically invokes § 108(b) for determining whether a
21 debtor or trustee has exercised any right to redeem in a timely
22 manner.”); see also In re Northington, 876 F.3d at 1313
23 (rejecting the notion that “the automatic-stay provision applies
24 to toll an as-yet-unexpired state-law redemption period
25 indefinitely, thereby preventing the period from lapsing and (in
26 effect) keeping pawned assets in the estate”). Section 362(a) is
27 still relevant, however, in cases like this one, where a
28 redemption period does not start running until the creditor gives
a notice, and the automatic stay prevents the creditor from
giving that notice.

⁷ Pawnshop laws vary widely from state to state. See, e.g.,
Del. Code Ann. § 2307(b) (prohibiting the pawn of prosthetic
limbs); Clark County, Nev. Ord. 6.24.150 (stating that it is
illegal to accept pawned goods from someone known to be a
“habitual drunkard” or “an insane person”). Most state laws
provide that pawned property “automatically” vests in the
pawnbroker when the redemption period expires, but a minority
(including California) require the pawnbroker to give notice to
the pawnor before the pawnbroker acquires full title to the
property or sells the property. Thirteen jurisdictions
(California, Kentucky, Massachusetts, New Jersey, New Mexico, New
(continued...)

1 inappropriate. We agree that application of state law in this
2 context produces different results in different states, but this
3 is neither wrong nor even unusual. "Property interests are
4 created and defined by state law. Unless some federal interest
5 requires a different result, there is no reason why such
6 interests should be analyzed differently simply because an
7 interested party is involved in a bankruptcy proceeding." Butner
8 v. United States, 440 U.S. 48, 55 (1979). "[U]ndefined
9 considerations of equity provide no basis for adoption of a
10 uniform federal rule" displacing state property law. Id. at 56.

11 Accordingly, Ms. Sorensen's redemption rights did not
12 terminate because R&J did not obtain relief from the automatic
13 stay before giving the ten-day notice. The bankruptcy court did
14 not err.

15
16
17 ⁷(...continued)
18 York, Ohio, Oregon, Pennsylvania, South Carolina, Wisconsin,
19 District of Columbia, and Guam) require notice. See, e.g., Ohio
20 Rev. Code Ann. § 4727.11 ("the licensee shall notify the pledgor
21 . . . [that] the pledged property shall be forfeited to the
22 licensee"); Or. Rev. Stat. § 726.400(3) ("the pawnbroker may not
23 deem a pledge to be forfeited until: (a) The pawnbroker notifies
24 the pledgor that the pledge is at risk of forfeiture . . .");
25 Wis. Stat. Ann. § 138.10 ("A pawnbroker shall not sell any pledge
26 unless due notice of such contemplated sale has been forwarded to
27 the pledgor"). A few other jurisdictions require that
28 the pawnshop give public notice of the upcoming sale. See 19
R.I. Gen. Laws Ann. § 19-26-10; V.I. Code Ann. tit. 9 § 228.
Still others have no pawnshop laws or leave the regulation up to
local government. But the majority of jurisdictions do not
require further notice or simply do not speak to any further
notice requirement prior to the pawnshop acquiring full interest
in the pawned property. Our holding here only applies where
applicable nonbankruptcy law requires the pawnbroker to give
notice in order to terminate the pawnor's rights in the property.

1 **B. We need not decide whether the plan has preclusive effect.**

2 The bankruptcy court alternatively held that R&J was bound
3 by the terms of the confirmed plan, which treated R&J as a
4 secured creditor and provided for redemption of the pawned
5 jewelry. We do not reach this issue on appeal because we are
6 affirming the decision on another, independently sufficient
7 ground.

8 **CONCLUSION**

9 The bankruptcy court did not err when it denied the Motion
10 to Dismiss and granted the TRO Motion. We AFFIRM.

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